PART 299—IMMIGRATION FORMS

7. The authority citation for Part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR Part 2.

8. Section 299.1 is amended by revising the entries for Forms I–698, I–699, and I–803 to read as follows:

§ 299.1 Prescribed forms.

* * * * *

I–698 (08/10/88)—Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99–603).

I–699 (10/20/88)—Certificate of Satisfactory Pursuit.

* * * * *

I–803 (09/27/88)—Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II.

* * * * *

9. Section 299.5 is amended by revising the entry for Form I–698 to read as follows:

§ 299.5 Display of control numbers.

* * * * *

I–698	Application to Adjust Status from Temporary to Permanent Resident (Under section 245A of Pub. L. 99–603)
	1115–0155

* * * * *

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89–15792 Filed 7–11–89; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Parts 103 and 245

[INS No.: 1003–89]

RIN 1115–AA31

Powers and Duties of Service Officers; Availability of Service Records, Adjustment of Status to That of Person Admitted for Permanent Residence

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: On March 3, 1987, the Service published an interim rule implementing sections 117, 202, and 203 of Pub. L. 99–603, the Immigration Reform and Control Act, (IRCA), at 52 FR 6320. The interim rule was corrected on April 27, 1987 (52 FR 13827). This final rule amends certain portions of the corrected interim rule based on comments received during the comment period and in compliance with Pub. L. 100–525, the Immigration Technical Corrections Act of 1988. This final rule changes the language of the corrected interim rule to comply with language changes to IRCA contained in Pub. L. 100–525, clarifies the appeal process in Cuban–Haitian adjustment cases, clarifies the effect of the interim rule on renewed adjustment applications under Part 242 of the regulation, and adds three sections to the regulation regarding the waiver provisions of section 212(a)(19) of the Act that were made available to Cuban-Haitian Adjustment applicants by Pub. L. 100–525.

DATE: August 11, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph D. Cuddihy, Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone (202) 633–5014

SUPPLEMENTARY INFORMATION: The Service received five comments to the interim rule published on March 3, 1987. In addition, on October 24, 1988, the President signed Pub. L. 100–525, "Immigration Technical Corrections Act of 1988" which amended in part, sections 117 and 202 of IRCA, the subject of the interim rule. Three commenters offered opinions concerning § 245.1(c)(1) of the interim regulation concerning the definition of which individuals are in "legal immigration status." Two commenters felt the Service was too restrictive in its interpretation and should include individuals who are not in lawful nonimmigrant status but in the United States under some other status which is condoned by the Service (e.g. voluntary departure). One commenter felt the Service was too liberal in this provision, and more people should be deemed ineligible. The Technical Corrections Act amended the statutory language upon which this section of the regulation is based from "legal status" to "lawful status." It is the Service view that the original definition of "legal immigration status" (now "lawful status") comports with Congressional intent in enactment of the provision. The Service has, therefore, made no changes to this paragraph other than this amendatory language of Pub. L. 100–525.

One commenter addressed § 245.1(c)(2) of the interim regulation stating that if an individual's nonimmigrant stay expires while an adjustment application is pending with the Service, that applicant should be able to renew his or her adjustment application before an immigration judge in proceedings under part 242 of the regulation if the adjustment application was denied by the district director. The Service agrees with this interpretation, but has added appropriate language to § 245.2(a)(5)(ii) of the regulation rather than § 245.1(c)(2) for the sake of clarity.

One commenter also expressed opposition to the amendment of § 245.1(c)(3) regarding the effect of a departure and reentry of an individual who has not maintained a legal status and to a paragraph in the Supplementary Information of the interim regulation referring to the effect of the amendment on the Stateside Criteria Program. The interim regulation as written is consistent with the statute in these areas and will not be amended. The Stateside Criteria Program has been terminated by the Department of State and is no longer an issue.

One commenter addressed issues raised in § 245.6 of the regulation, recommending that Cuban Haitian adjustment applications be renewable in subsequent deportation proceedings, rather than appealable to the Associate Commissioner, Examinations under Part 103 of the regulations. The regulation as written gives individuals whose applications have been denied adequate administrative review, and there is no need to place an extra burden on immigration judges, as suggested by this comment. In this final rule, the Service has added Cuban-Haitian Adjustment applications to the list of applications appealable to the Associate Commissioner in § 103.1, to clarify any misconception of the appellate authority.

In addition to considering the comments, the Service has also amended the interim regulation to reflect changes in language in the statute by Pub. L. 100–525 and to reflect regulations published May 1, 1987 regarding the definition of the term "resided continuously" as used in section 245A(a)(2) of the Immigration and Nationality Act, as amended.

This final rule also reflects changes to section 202(a)(2) of IRCA brought about by Pub. L. 100–525, allowing the Attorney General to waive, at his discretion, the provisions of section 212(a)(19) of the Act, and making the amendment effective as if it was included in the enactment of IRCA. New §§ 245.6 (f) and (g) are added, outlining the factors that will be considered by the district director in determining whether the Attorney General's discretion should be granted, and outlining the procedure to be followed by individuals whose applications were denied prior to enactment of Pub. L. 100–525, but who now would like to reopen their adjustment cases to allow the Service to consider a waiver request for section 212(a)(19) ineligibility as provided in Pub. L. 100–525.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 8 CFR Parts 103 and 245

Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, Chapter I of Title 8, Parts 103 and 245 of the Code of Federal Regulations are amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1303–1304, 1443, 28 U.S.C. 1746; 31 U.S.C. 9701; E.O. 12356, 3 CFR., 1982 COMP., p. 166, 8 CFR Part 2.

2. Section 103.1 is amended by adding a new paragraph (f)(2)(xxxii) to read as follows:

§ 103.1 Delegations of Authority.

* * * * *

(f) * * *

(2) * * *

(xxxii) Application for status as permanent resident under § 245.6 of this title.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for Part 245 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1159, 1182, 1255, 8 CFR Part 2.

4. In § 245.1, paragraphs (b)(5), (b)(6), (c)(i) introductory text, (c)(2) introductory text, (c)(2)(ii), and (c)(3) are revised to read as follows:

§ 245.1 Eligibility.

* * * * *

(b) * * *

(5) Any alien who on or after November 6, 1986 is not in lawful immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27) (H) or (I);

(6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a lawful status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27) (H) or (I) of the Act;

* * * * *

(c) *Definitions*—(1) *Lawful Immigration Status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" is limited to individuals who are:

* * * * *

(2) *No fault of the applicant or for technical reasons.* The parenthetical phrase "other than through no fault of his or her own or for technical reasons" shall be limited to:

* * * * *

(ii) A technical violation resulting from inaction of the Service (as for example, where an applicant establishes that he or she properly filed a timely request to maintain status and the Service has not yet acted on that request). An individual whose refugee or asylum status has expired through passage of time, but whose status has not been revoked, will be considered to have gone out of status for a technical reason.

* * * * *

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a lawful immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

* * * * *

5. In § 245.2, paragraph (a)(5)(ii) is revised to read as follows:

§ 245.2 Application.

(a) *General.*

* * * * *

(5) * * *

(ii) *Under section 245.* If the application is approved, the applicant's permanent residence shall be recorded as of the date of the order approving the adjustment of status. An application for adjustment of status as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. No appeal lies from the denial of an application by the district director, but the applicant retains the right to renew his or her application in proceedings under Part 242 of this chapter, or under Part 236 if the applicant is a parolee and meets the two conditions outlined in § 245.2(a)(i). At the time of renewal of the application, an applicant does not need to meet the statutory requirement of section 245(c) of the Act, or the regulatory requirements of § 245.1(f), if in fact those requirements were met at the time the renewed application was initially filed with the district director.

* * * * *

6. In § 245.6, paragraphs (a), (c)(2), and (d)(2) are revised, and new paragraphs (f), (g), and (h) are added to read as follows:

§ 245.6 Adjustment of status of certain Cuban and Haitian nationals under the Immigration Reform and Control Act of 1986 (Pub. L. 99–603).

(a) *Application.* Each person applying for the benefit of adjustment of status under section 202 of Pub. L. 99–603 was required to file a separate Form I–485 (Application for Lawful Permanent Residence), without fee, with the district director having jurisdiction over the applicant's place of residence. Each application was accompanied by Form I–643 (Health and Human Services Statistical Data Sheet), the results of a medical examination given in accordance with § 245.3 of this Part, and, if the applicant had reached his or her 14th birthday but was not over 79 years of age, Form G–325A and an applicant fingerprint card (Form FD 258). No application for benefits under section 202 of Pub. L. 99–603 could be initially filed after November 7, 1988.

* * * * *

(c) * * *

(2) Is eligible for an immigrant visa and otherwise admissible to the United States under section 212(a) of the Act, except for paragraphs (14), (15), (16), (17), (20), (21), (25), and (32), which do not apply; or paragraph (19) which may be waived at the discretion of the Attorney General;

* * * * *

(d) * * *

(2) *Continuously resided.* The term "continuously resided" as used in section 202 of Pub. L. 99–603 has the same meaning as the term "resided continuously" as defined in § 245a.1(c)(i) of this Part.

* * * * *

(f) *Waiver.* In accordance with Pub. L. 100–525 the provisions of paragraph 212(a)(19) of the Immigration and Nationality Act may be waived by the Attorney General in any case filed under section 202 of Pub. L. 99–603. Generally, a determination of

excludability under section 212(a)(19) will be waived for purposes of section 202 of Pub. L. 99–603 if the exclusion charge is a result of fraud or willful misrepresentation at the time of initial entry of the applicant into the United States prior to January 1, 1982, absent any other significant negative factors. Generally, a determination of excludability under paragraph (19) will not be waived for purposes of section 202 if the exclusion charge is a result of fraud or willful misrepresentation occurring in connection with an attempt to establish eligibility for permanent resident status either by a visa petition, application for an immigrant visa, or application for adjustment of status, after the initial entry into the United States, absent any significant positive factors. The district director will consider the following factors in determining whether the discretion of the Attorney General should be exercised:

(1) Number of excluding actions in which the applicant has engaged;

(2) Length of time since the excluding action;

(3) Immediate family members in the United States;

(4) Criminal record of the applicant;

(5) Exhibition of rehabilitation since the excluding action;

(6) Employment history in the United States; and

(7) Any other circumstances or situations the district director deems relevant.

(g) *Waiver in a pending case.* An individual whose application for benefits under section 202 of Pub. L. 99–603 is pending with the Service may request a waiver of section 212(a)(19) by supplementing his or her application with a letter. The letter must include the following facts:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99–603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) in this section.

(h) *Motions to reopen.* An individual whose application for the benefits of section 202 of Pub. L. 99–603 was denied by the Service solely on the basis of ineligibility under section 212(a)(19) prior to the passage of Pub. L. 100–525 may file a motion to reopen the proceedings in accordance with the provisions of § 103.5 without fee. Motions to reopen applications which were properly filed under section 202 during the time period specified in the statute may be filed at any time. No separate application form for a waiver need be submitted with a motion to reopen filed in accordance with this paragraph. No separate appeal process is available if a waiver request is denied, other than to appeal denial of the request for adjustment of status. In addition to the requirements of § 103.5 of this part, these motions must contain the following:

(1) The identity of the applicant, including name, date and place of birth, and alien file number;

(2) The fact that the decision was made in accordance with section 202 of Pub. L. 99–603, and is submitted in compliance with the requirement to request a waiver of section 212(a)(19) of the Act;

(3) The circumstances which are to be waived; and

(4) A discussion of the factors upon which the decision is to be based, as listed in paragraph (f) of this section.

Dated: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 87–15788 Filed 7–11–89; 8:45 am]

BILLING CODE 4410–10–M

---

8 CFR Part 245A

[INS Number: 1022–R–89]

RIN Number 1115–AA52

Adjustment of Status for Certain Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule addresses the adjustment of status of temporary resident aliens to that of aliens lawfully admitted for permanent residence, in accordance with section 201 of the Immigration Reform and Control Act of 1986 (IRCA). The Service, as the result of the publication of this rule, finalizes the provisions affecting the adjustment of temporary resident aliens to permanent residence.

EFFECTIVE DATE: July 12, 1989.

FOR FURTHER INFORMATION CONTACT: Terrance M. O'Reilly, Assistant Commissioner, Legalization, (202) 786–3658.

SUPPLEMENTARY INFORMATION: On November 6, 1986, the President signed into law the Immigration Reform and Control Act of 1986, Pub.L. 99–603 ("IRCA"). This legislation, the most comprehensive reform of our immigration laws since the enactment of the Immigration and Nationality Act ("INA") in 1952, reflected a resolve to strengthen law enforcement to control illegal immigration. It also reflected the Nation's concerns for certain aliens who had resided illegally in the United States. The theme of this legislation was focused upon regaining control of our Nation's borders and eliminating the illegal alien problem in this country through the firm yet fair enforcement of our Nation's laws.

The Immigration and Naturalization Service took a number of steps to ensure the new legislation would be implemented effectively, efficiently and fairly. Service officials engaged in continuing dialogue with members of the public and representatives of interested organizations on how the legalization provisions of "IRCA" would be implemented.

The temporary resident phase of the Legalization Program began on May 5, 1987 and ended on May 4, 1988. The temporary resident phase of the Legalization Program was the first step for illegal aliens to become full and active members of the American society. The temporary resident phase of the program proved to be an overwhelming success with more than 1,700,000 applicants taking advantage of the opportunity to come out of the shadows.

In order to complete the process of becoming a lawful permanent resident of the United States, individuals who gained lawful temporary resident status during phase I of the Legalization Program are required to make application for such permanent resident status.

An interim rule was published in the **Federal Register** at 53 FR 43986 on October 31, 1988. Forty-eight comments, representing 71 individuals and organizations were received. These comments were reviewed and, as a result, several changes have been incorporated into this final rule. The Service appreciates the time and significant effort put forth by all concerned parties.

Summary of the Final Rule

This rule makes final the provisions found in the interim rule published at 53 FR 43986 on October 31, 1988 pertaining to the requirements for certain temporary resident aliens, who are otherwise eligible, to adjust their status to that of aliens lawfully admitted for permanent residence in the United States and the procedures to be used

during this process. Some changes made in this final rule to the interim regulations as a result of public comment caused the changing of similar regulations found in Part 245a.4 dealing with the Extended Voluntary Departure (EVD) class of temporary resident aliens. In addition, as a result of public comment, court proceedings, and the provisions of the Immigration Technical Corrections Act of 1988 (ITCA), this rule makes changes to certain other regulations not found in the interim rule.

The following summarizes the processing method that is being used by the Service for the processing of applications for permanent residence during this phase of the legalization program: The Service is utilizing a processing method that features direct mail of applications to four Regional Processing Facilities (RPFs) located at Williston, Vermont (Eastern); Lincoln, Nebraska (Northern); Dallas, Texas (Southern); and Laguna Niguel, California (Western). After preliminary processing of applications at the Regional Processing Facilities, applicants are interviewed at selected Service offices (including district offices, suboffices, and legalization offices) throughout the country. The adjustment of temporary resident aliens to permanent residence consists of five major segments: Pre-submission of applications; Regional Processing Facility processing (pre-interview); INS field and legalization office processing; Regional Processing Facility processing (post-interview); and Immigration Card Facility (ICF) processing.

In the pre-submission of applications segment the Service is distributing information and forms for the adjustment to permanent resident phase of the Legalization Program. Several commentors urged the Service to continue its public information and outreach efforts for Phase II of the Legalization Program. The Service has and will continue these efforts. The Service is confident that awareness of the Legalization Program is high. In testimony before the Subcommittee on Immigration and Refugee Affairs, Committee on the Judiciary, United States Senate, the Government Accounting Office reported that a market research study found that 92 percent of undocumented Hispanics were aware that the Legalization Program exists (over 84% of the legalization phase I applicants were Hispanic). In addition, the Service has received over 460,000 applications for permanent residence as of mid-June, 1989. The publicity and outreach campaign for Phase II is more selective since the Service knows who the temporary residents are and where they reside. This being the case, local level publicity and outreach methods are being employed along with national efforts.

In the Regional Processing Facility (RPF) processing (pre-interview) segment, all pre-interview processing tasks (e.g., data entry, fee receipting, application review, scheduling of interviews, etc.) are being performed. If during the review of the application at the Regional Processing Facility it is determined that the applicant has met all eligibility requirements (continuous residence, English language/U.S. history and government, etc.) and there was no indication of fraud in Phase I, the application may be approved. In this situation, the applicant would be notified by the RPF to appear for processing at the INS field or legalization office for an Alien Registration Receipt Card (I–551).

In the INS field and legalization office segment, applicants are interviewed as well as processed for Alien Registration Receipt Cards (I–551). The interview may include an English language/U.S. history and government examination for those applicants who wish to satisfy the standards for section 312 (requirements as to understanding the English language, history, principles and form of government of the United States) of the Immigration and Nationality Act.

In the RPF processing (post-interview) segment, appeal processing and other post-interview administrative procedures occur.

In the final segment, the Immigration Card Facility processing segment, Alien Registration Receipt Card (I–551) production is completed and the card is mailed to the address specified by the alien as his or her place of residence.

Section 245a.1(i) is amended as a result of receipt of comments that the Service should clarify in regulation what is now the policy concerning public cash assistance, by deleting the words, "or his or her immediate family members". The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.1(r) is amended to include a list of qualified designated entities (QDEs) Phase II activities. Numerous comments were received concerning this definition. Several commentors suggested that the Service should consider adding QDEs in good-standing as allowable representatives under 8 CFR 292.1 for IRCA permanent resident applicants. The Immigration Reform and Control Act of 1986 (IRCA) does not provide for Qualified Designated Entity involvement in the second phase of the Legalization Program. The Service feels the certification procedures found in 8 CFR 292 should be followed by all organizations and it is not proper to single out QDEs in good-standing for blanket certification.

Section 245a.1(s) defines the term "satisfactorily pursuing" as used in section 245A(b)(1)(D)(i)(II) of the Act. Numerous comments were received on this section. Overwhelmingly, commentors supported the Service's various options an applicant could pursue in order to "satisfactorily pursue a course of study". The Service is genuinely concerned that temporary residents enter the mainstream of American society in a fair and equitable manner within the statutory framework provided by the Congress. Comments received on § 245a.1(s)(1) generally endorsed the minimum 60 hour course length. Several commentors cited that increasing the completed amount of hours to 40 adversely affected State Legalization Impact Assistance Grant (SLIAG) allotments. The Service consulted with the Department of Health and Human Services and was informed that in planning for educational requirements, State estimates for educational assistance under SLIAG should have been based on the 100 hour minimum standard that was contained in the proposed rule or the 60 hour minimum standard that was contained in the interim rule. The minimum number of attendance hours should not have been used in preparing allotment requests. Commentors also urged the Service to "grandfather" in those applicants who may have already completed 30 hours of a course thereby not requiring these applicants to complete an additional 10 hours. The Service considered this recommendation but does not concur. The interim rule which was effective at the beginning of the permanent resident phase of the Legalization Program, November 7, 1988, contained the 40 hour completion requirement. No applications were adjudicated under the 30 hour requirement found in the proposed rule. In addition, Congressional intent calls for legalization applicants to attain basic citizenship skills. The Service has considered numerous input from the public before providing for the minimum 40 hour attendance requirement and the minimum 60 hour course length. The Service considers these hourly requirements both realistic and fair.

Section 245a.1(s)(2), as a result of comments received, is amended to

define "GED" as General Educational Development. In addition, the Service was advised by one commentor that not all states use a standard "GED English Proficiency Examination". The Service therefore will include language that provides for states to use their usual GED English proficiency test. Language is also added to clarify that the high school/GED curriculum include at least 40 hours of instruction in English and U.S. history and government.

Comments received concerning § 245a.1(s)(3) brought attention to the fact that "U.S. History" was absent from the standard curriculum language. The term has been added. Also, the interim rule contained the 30 hour completion requirement in the curriculum language. This has been changed to correctly reflect the 40 hour requirement. Language is also added to provide for use of a learning institution's standard of "acadamic year".

Section 245a.1(s)(4) is amended by adding the standard curriculum language for clarification purposes.

Several comments were received concerning § 245a.1(s)(5). Commentors agreed with the deletion of the "statement of intent" language that appeared in the interim rule. Commentors urged the Service to replace the word "home" with another term as it was deemed as too restrictive. The Service agrees and will replace the word "home" with the words "individual study" to recognize that applicants may have studied at various locations. Language is also added to reflect the fact that the Service may also administer proficiency tests along with other qualified administrators. Qualified Designated Entities in good-standing may also be designated as qualified administrators and language stating this fact has also been added. One commentor asked how an applicant would know whether he or she passed the proficiency test. An applicant will receive a document that reflects the test results. A Certificate of Satisfactory Pursuit (I–699) will not be issued to such an applicant. The Service also adds the name of the proficiency test ("IRCA Test for Permanent Residency"). Finally, a point of contact is provided for those who wish to participate in testing.

Comments received on § 245a.1(u) concerned clarification of the definition of curriculum. Commentors stated that it was unclear whether these definitional standards applied to the other alternatives found in § 245a.1(s) concerning "satisfactorily pursuing". The definitional standard does apply to § 245a.1(s) (1) through (4). The proficiency test provided for in § 245a.1(s)(5) was developed to conform to these definitional standards.

New § 245a.1(v) is added to conform with the requirements of the Immigration Technical Corrections Act of 1988 (ITCA). As a result of the ITCA, section 245A(b)(1)(D)(ii) of the Immigration and Nationality Act was amended to expand the exception for certain individuals of the basic citizenship skills requirement to include developmentally disabled individuals. Section 245a.1(v) defines the term "developmentally disabled". The term's meaning is the same as found in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100–146, enacted on October 29, 1987. Section 245a.3(b)(4)(ii) is also amended as a result of the ITCA.

Section 245a.2(a)(2)(i) is removed as a result of the outcome of court proceedings. This provision, published in the May 1, 1987 implementing regulations, required an alien who was subject to an Order to Show Cause issued on or after November 6, 1986 and prior to May 5, 1987 and who had established prima facie eligibility for adjustment of status under section 245A(a) of the Act to file an application for adjustment during the period beginning on May 5, 1987 and ending on June 3, 1987. All cases that were denied because the applicant failed to satisfy the provision of 8 CFR 245a.2(a)(2)(i) will be reviewed to determine if the applicant is otherwise eligible for the legalization benefits sought. If the applicant is found to be otherwise eligible, the application will be reopened. The applicant will be so notified of the reopening and will be invited to report to the nearest legalization office to obtain employment authorization.

Section 245a.2(c)(5) is removed and reserved because of the deletion of § 245a.2(a)(2)(i).

Section 245a.2(d)(4) is amended as a result of comments received that the Service should bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) of the Act without applying the Special Rule for determination of public charge.

Section 245a.2(k)(4) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.3(a) is redesignated § 245a.3(a)(1) and amended for editorial purposes and new § 245a.3(a)(2) is added to address the application for adjustment from temporary to permanent resident status. Under the provisions of the Immigration Reform and Control Act of 1986, a temporary resident alien who has resided in the United States for a period of eighteen (18) months may make application for permanent resident status during the twelve-month period beginning on the day after the temporary residence period has been completed. The majority of the comments received centered around the manner of determining when an applicant was eligible to file an application for permanent residence and expressed concern that applicants would find it difficult to determine when they could apply. The Service addressed this issue in an interim rule published at 54 FR 13360, April 3, 1989. The interim rule provided for the submission of applications anytime after the grant of temporary residence but prior to the end of an applicant's twelve-month period of eligibility to apply for adjustment to permanent residence. Temporary residents are encouraged to submit their applications as soon as possible. Applications must be submitted by the end of the 30-month period from the date the application for temporary residence was approved. Language is therefore included in § 245a.3(a)(1) to reflect the fact that applicants will receive the entire 30-month period of time in which to apply from the time of the granting of the application for temporary residence.

An applicant will still be considered a temporary resident from the date of filing their temporary resident application. In this way, every applicant is provided with the statutorily guaranteed 30-month period and still receives the benefit of having the time count from the date of filing for permanent residence and for naturalization purposes. In addition, this regulatory construction is considered fair for the purposes of State Legalization Impact Assistance Grant (SLIAG) funding. The Service began accepting applications on November 7, 1988. Applications received anytime subsequent to the granting of lawful temporary residence but prior to an applicant's eligibility to apply date are being held by the Service as a convenience to the public. These applications are considered "filed" on the applicant's eligibility date.

To further provide assistance to temporary residents, the Service will mail a notice to all temporary resident aliens who have not yet filed an application for permanent residence. The notice will state that an application for permanent residence can be submitted at anytime after the date temporary residence was granted and before the date the eligibility period to file for permanent residence ends. In addition, another mailer will be sent to all temporary residents who have not submitted their application before 60 days prior to the end of their eligibility period reminding them to apply.

New § 245a.3(a)(2) is added to provide that no application for permanent residence will be denied, for failure to apply, before the end of 30 months from the date of actual approval of the temporary resident application. This provision conforms with the statute which guarantees a 30-month period from the granting of temporary residence.

Section 245a.3(b) is amended as a result of one commentor recommending that the Service should be able to accept applications mailed from outside of the United States and to reflect the change in the acceptance of applications as reflected in § 245a.3(a)(1). The Immigration Reform and Control Act of 1986 does not specifically require that an applicant must be actually in the United States at the time of filing an application. Therefore, the phrase "physically present in the United States" will be deleted from this section.

Section 245a.3(b)(1) is amended to add clarifying language relating to the filing of an application, the continuous residence and the interview requirements.

Comments received on § 245a.3(b)(2) recommended clarification of the standard used to excuse an absence or absences outside the 30/90 day rule and the officials who have the authority to excuse such absences. The Service will amend the language for clarification purposes and to include the director of the Regional Processing Facility as an official who can excuse absences. Concerning the determination of the abandonment of residence, the Service will consider the totality of an applicant's information in concluding whether the absence or totality of absences represents a meaningful interruption of continuous residence.

Section 245a.3(b)(4)(ii) is amended as a result of the comments received, as well as, the provisions of the Immigration Technical Corrections Act of 1988. Commentors urged the Service to clarify that a formal waiver application (I-690) was not required for an individual who is waived or exempted from the requirements of § 245a.3(b)(4)(i). The Service will add clarifying language. In addition, clarifying language is provided pertaining to the term "physically unable to comply". Comments were also received requesting the Service to include persons who are learning disabled. The Service will follow the intent of Congress in using the definition of "developmentally disabled". One commentor also recommended the Service qualify the exemption for an individual who was over 50 years of age and resided in the United States for 20 years to conform with Section 312 of the Immigration and Nationality Act (INA). Section 312 of the INA relates to qualifications for naturalization and exempts a "50/20" applicant from the requirement to demonstrate an understanding of the English language including the ability to read, write, and speak. Under section 312, a "50/20" applicant is not exempt from demonstrating a knowledge and understanding of the fundamentals of the history and of the principles and form of government of the United States. The Service will not implement the recommendation since this section provides an exemption from the demonstration of the basic citizenship skill requirements that equates to the "satisfactorily pursuing" criteria found in § 245a.1(s). The exemption afforded by this section to a "50/20" applicant does not, therefore, exempt the applicant from the history and government requirement of section 312 at the time of petitioning for naturalization.

Section 245a.3(b)(4)(iii)(A) is amended to address clarification concerns expressed by commentors. Language will be added to clarify that the passing of an INS authorized standardized "section 312" test will satisfy the basic citizenship skills requirement as does the INS directly administered test. The Service will accept an applicant's passing of a standardized test as of November 7, 1988 since the Service authorized the Educational Testing Service (ETS) version of the standardized test on November 4, 1988. This section is also changed to provide for the presentation of an Educational Testing Service (ETS) notice of passing test results at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview. The Service also provides for independently verifying the test results. Concerning the manner in which the examination of an applicant's ability to read and write English is conducted, the Service will follow the guidance provided in section 312 of the Immigration and Nationality Act. Finally, several commentors supported the use of the standardized list of 100 questions. The list is reproduced at the end of this regulation.

Concerning § 245a.3(b)(4)(iii)(B) commentors requested that the Service allow for not only the presentation of an I-699, Certificate of Satisfactory Pursuit, but also for other evidence of "satisfactory pursuit", or evidence of having passed an INS authorized standardized exam after the failing of the English and/or U.S. History and Government portion of the examination conducted at the time of interview. The Service has provided for the demonstration of the basic citizenship skills requirement in various ways and certainly would not prohibit an applicant from exercising any option during the pendency of his or her application. This section will, therefore, be amended to allow for the presentation of an I-699, or any other evidence of satisfying the basic citizenship skills requirement. Several commentors expressed concern about the validity of an applicant's I-688 during the six-month retest period. The issue of I-688 validity is addressed in § 245a.3(d)(5). An applicant would receive an extension of validity of the I-688 if needed. Finally, language is added to clarify that a second interview opportunity will be afforded an applicant before his or her application is denied, the denial being based solely on the failure to pass the basic citizenship skills requirement.

Section 245a.3(b)(4)(iv) is amended by replacing the term "General Equivalency Diploma" with "General Educational Development" to conform with § 245a.1(s)(2). Commentors also suggested the Service accept "other credible documentation" in addition to a high school diploma. The Service feels that the documentation is readily available and will not include the recommended language. Language is also added which defines the Service's proficiency test as the "IRCA Test for Permanent Residency". This section is also changed to provide for the presentation of a Certificate of Satisfactory Pursuit (I-699) at the time of filing an I-698, application for permanent residence, subsequent to the filing of an I-698, or at the time of interview.

Section 245a.3(b)(5) is amended to provide for the certification process by which district directors and the Director of Outreach will certify educational programs as recognized courses of study that provide instruction in English and

U.S. History and Government. One commentor raised the possibility of a program operating within more than one INS district jurisdiction being certified by one district director while not being certified by another district director. The Service acknowledges that the possibility exists and therefore will provide for a review of a denied certification decision by the appropriate Regional Commissioner where the petitions of a local, cross-district program are approved in one district and denied in another within the same State. Minor editorial changes have also been made.

Numerous comments were received concerning § 245a.3(b)(6). Commentors urged the Service to modify the requirement of submitting notices of participation within 30 days after publication of the interim rule (October 31, 1988) or within thirty days after creation of the course of study. The Service agrees and adds language that allows for the submission of a notice of participation as soon as possible since a Form I–699, Certificate of Satisfactory Pursuit, will not be accepted until a notice of participation is on file with the Service. The Service will endeavor to review notices of participation as promptly as possible. Language is also added which clarifies that notices of participation shall be submitted by blanket certified course providers to only the district director in whose jurisdiction the program is conducted and that course providers notify the district director in writing of any change to the information contained in the notice of participation. Additionally, it was recommended that service providers receive an I–804, Certificate of Attorney General Recognition to Provide Course of Study for Legalization: Phase II, if a notice of participation is submitted that complies with INS regulations. The Service concurs and will so provide for the issuance of an I–804 certificate. Commentors were concerned that the different regional jurisdictions would encounter difficulty in verifying approved course providers located in other regions. Lists of course providers, therefore, will be disseminated to all four INS Regional Processing Facilities to address this issue. Language is also added to provide for each district director compiling and maintaining lists of recognized courses within his or her district.

Section 245a.3(b)(7) explains the fee structure for courses. Comments were received requesting clarification of the reaching of a determination of whether a fee was proper. The Service wishes to be flexible and consider the various factors that can have a bearing on the setting of course fees. To clarify the Service's position language is added which cites some factors that can be used in determining whether the fee charged is appropriate. The list is not exhaustive. The Service will also seek the assistance of various Federal, State and local entities, as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

Section 245a.3(b)(8) provides information on the Federal Textbooks on Citizenship. Two commentors inquired as to how textbooks would be distributed. Textbooks are distributed as provided for in section 332 of the Immigration and Nationality Act (e.g., public schools conducting courses of instruction in preparation for citizenship).

Section 245a.3(b)(9) addresses the maintenance of student records by course providers. One commentor urged to make the requirement for the maintenance of student records prospective since it was stated that many providers did not collect all of the required information. The Service feels that course providers will, in most instances, have maintained information on individuals to the extent necessary to meet the intent of this section and, therefore, will not change this section.

Section 245a.3(b)(10) addresses the issuance of the Certificate of Satisfactory Pursuit (I–699). This section is amended by redesignating paragraph (b)(10)(vii) as paragraph (b)(10)(viii) and adding a new paragraph (b)(10)(vii) to provide that a Certificate of Satisfactory Pursuit (I–699) can be accepted from a course provider who is decertified. Language is added to state that certificates will not be accepted from a school or program that has been decertified unless the applicant had enrolled in and been issued a certificate prior to the decertification, provided that no fraud was involved. One commentor suggested the Service attempt to verify course attendance via computerized data lists from State Departments of Education. The suggestion has merit and the Service will look into the requirements of establishing such a procedure. The Service cannot, however, at this time amend this section to provide for such a procedure due to the technical, legal and time elements involved.

Section 245a.3(b)(12) is amended to correct a section reference.

Section 245a.3(c) is amended for clarification purposes. Section 245a.3(c)(4) defines as an ineligible class for permanent residence those aliens who are not granted temporary residence. The statute provides for the adjustment of temporary residents to permanent residence. An alien would, therefore, have to be a temporary resident alien in order to be adjusted to permanent residence. Aliens who have their temporary residence status terminated would, therefore, be ineligible for permanent residence and new section 245a.3(c)(5) will so state.

Section 245a.3(d)(2) is amended to clarify the role of Qualified Designated Entities (QDEs) in good-standing in the certification of documents process and for editorial purposes. In addition, language is added to provide for the proper way to authenticate a certification. One commentor recommended the elaboration of what constitutes a complete application including all required documentation. Each case will dictate the extent of what documentation is required. It is not possible to address in the regulations the numerous possibilities that exist regarding documentation to support an applicant's claim to eligibility for permanent residence. The Service will only request documentation as needed to properly adjudicate cases or investigate fraud.

Section 245a.3(d)(4) is amended by deleting the term "(Pub. L. 99–603)" from the title description of the I–693 since the I–693 is now used as the medical examination form for all applicants for adjustment of status. Several commentors agreed with the language provided in the interim rule. Additional clarification was requested as to how an applicant should support that he/she previously submitted a medical examination form reflecting a serologic test for HIV. A statement of the prior submission of the medical examination form will suffice as the Service will check an applicant's file to verify the statement. Language reflecting this clarification is added. The Service is also amending this section to include the basic criteria an applicant should address when filing for a waiver of the ground of excludability under section 212(a)(6)—HIV infection.

Section 245a.3(d)(6) provides for the adjudication of an application for permanent residence based on the existing record. Numerous comments were received concerning this section. Commentors in general supported the provisions set forth in the interim rule. Concern was expressed, however, that the Service not return the I–698 application along with a request for additional action for reasons of increasing the chance of loss of the application. The Service will add

language that clarifies when an application has to be returned. An application will be returned when it is not acceptable for filing (e.g., lacks the appropriate fee or is incomplete). The application will not be returned once accepted and the need arises for additional information or documentation. In this case a notice, requesting the additional information or documentation, will be sent to the applicant. In addition, the Service will hold in abeyance the adjudication of a case on the basis of the existing record where no response has been received to the two requests for additional information and/or documentation until the end of the 30-month period beginning from the time of the granting of the application for temporary residence.

Section 245a.3(e) is amended to provide for holding in abeyance the adjudication of a case on the basis of the existing record where an applicant has failed to appear for two scheduled interviews until the end of the 30-month period beginning from the time of the granting of the application for temporary residence. The Service has provided for similar action concerning adjudication of a case on the basis of the existing record where no response has been received to two requests for additional information and/or documentation (§ 245a.3(d)(6)). The Service will not automatically schedule another interview until the applicant or the applicant's attorney or accredited representative contacts the Service and requests another interview. Commentors expressed concern over an apparent contradiction between this section and the discussion contained in the summary of the interim rule concerning the need for an interview. An application may be approved at the Regional Processing Facility. This action, however, does not relieve the need for an applicant to appear at a Service office for the purpose of being processed for an I–551 permanent residence card. The Service, therefore, uses the term "interview" to refer to both an adjudicative interview and an interview for the purposes of I–551 processing. Commentors also stated that there appears to be no flexibility in the scheduling of interviews. This is not the case. The automated scheduling system allows for the rescheduling of interviews. The Service would like to remind all interested parties, however, that scheduled interviews should be kept if possible as rescheduling introduces delay in case processing, thus prolonging an applicant's wait for the completion of permanent residence processing.

Section 245a.3(f), concerning the inapplicability of numerical limitations, is added due to the inadvertent omission of this section from the October 31, 1988 interim rule. The remaining sections of this part are redesignated accordingly.

Section 245a.3(g)(2) is amended to correct an improper reference concerning the section that contains grounds of exclusion that cannot be waived. This section is also amended to require a waiver of certain grounds of exclusion before the granting of permanent residency, where the alien was excludable at the time of temporary residency and failed to apply for a waiver in connection with his or her application for temporary residence, or becomes excludable subsequent to the date temporary residence was granted.

Concerning § 245a.3(g)(3)(ii) changes are made to conform to the provisions of the Immigration Technical Correction Act of 1988. Specifically, the public charge ground of exclusion can be waived for an applicant who is or was an aged, blind or disabled individual as defined in section 1614(a)(1) of the Social Security Act. A formal waiver application (I–690) is not required if an applicant received a waiver for the public charge ground as a result of filing a waiver application during Phase I (temporary residence).

Section 245a.3(g)(4) is amended to correct editorial errors and does not change in substance. Commentors generally agreed with the provisions of the section.

Section 245a.3(g)(4)(iii) is amended as a result of the comments received concerning the Service's public cash assistance policy, and to correct an improper reference concerning the section that contains application of the Special Rule and is further amended by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Concerning § 245a.3(i) commentors cited an improvement in the interim rule provisions over those contained in the proposed rule. The Service wishes to reiterate its position that denials will be based on the totality of the information at the Service's disposal. In addition, the appeal mechanism provided in § 245a.3(j) affords an opportunity for administrative review of all denials.

Section 245a.3(j) provides for appeals to adverse decisions. One commentor recommended that the period for submission for appeal be lengthened to ninety days and that the denial notifications be sent registered mail. The Service has provided for more time for the submission of legalization appeals than normally provided for in § 103.3(a) for appeals of other Service denials. It is also felt that the use of certified mail is sufficient service of notification.

Section 245a.3(m) is amended to clarify that the required period for continuous residence for naturalization will begin from the date of adjustment to permanent residence.

Section 245a.3(n)(3) is amended, for clarification purposes, to reflect the intended prosecution of both the applicant and/or the individual supplying a false writing or document for use in the permanent resident application process.

Section 245a.3(n)(4) is amended to conform with the provisions of the Immigration Technical Corrections Act of 1988 concerning reports to Congress and for furnishing information at the discretion of the Attorney General in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce. Two commentors urged the Service to delete this section entirely stating that the section is neither necessary nor consistent with the statute (IRCA). Section 245A(a)(1)(c) allows the Attorney General and subsequently the Service to collect information on relatives of temporary resident applicants for the eventual use in support of visa petitions filed on their behalf. The Service also added language in the interim rule to provide for the use of legalization information for naturalization applications to assist in the verification of an applicant's claim that he or she is relieved from section 312 requirements (English and U.S. History and Government) and to verify legal resident status if needed. It is thus to the applicant's benefit for the Service to make use of information contained in granted legalization files for naturalization purposes. The Service, therefore, will not delete this section.

Section 245a.4(a)(10) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "or his or her immediate family members". The receipt of public cash assistance by immediate family members will not have a bearing on an applicant's eligibility for legalization.

Section 245a.4(b)(4)(v) is amended as a result of the comments received concerning the Service's public cash assistance policy, to bring the provisions of this section in line with the Service's operational guidelines on determining financial responsibility. The Service will

not deny an application for temporary residence as a result of finding an applicant subject to section 212(a)(15) without applying the provisions of § 245a.4(b)(11)(iv)—the application of the Special Rule for determination of public charge.

Section 245a.4(b)(11)(iv)(C) is amended as a result of the comments received concerning the Service's public cash assistance policy, by deleting the words, "and his or her family". For the purposes of the Special Rule, as explained in this section, an applicant need only demonstrate a consistent employment history that shows the ability to support himself or herself.

Section 245a.4(c)(1) is removed to conform to the changes made in § 245a.3(a) (1) and (2) concerning the adjustment of status of temporary residents to permanent residence. This section provided for the application for adjustment from temporary to permanent resident status for the "Extended Voluntary Departure" (EVD) class of temporary resident aliens. The removal of this section allows for the regulations affecting the application process for all other classes of temporary resident aliens to also apply to the EVD class of temporary resident aliens. An EVD temporary resident alien can now also submit an application for adjustment to permanent resident status at anytime after the granting of temporary residence but on or before the end of 30 months from the date the temporary resident application was approved by the Service.

Section 245a.4(c)(2) is redesignated due to the removal of § 245a.4(c)(1).

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

The Information collection requirements contained in this regulation have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. OMB control numbers for these collections are contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 245a

Aliens, Temporary resident status, Permanent resident status.

The interim rule published at 53 FR 43986–43997 on October 31, 1988, is adopted as final with the following changes:

Accordingly, Part 245a of Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 245A—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100–204, SECTION 902

1. The authority citation for Part 245a continues to read as follows:

Authority: 8 U.S.C. 1103, 1255a, 1255a note, and 8 CFR 2.1.

2. In § 245a.1, paragraphs (i), (r) and (s) (2), (3), (4), and (5) are revised, ((s) introductory text is republished), and paragraph (v) is added to read as follows:

§ 245a.1 Definitions.

* * * * *

(i) "Public cash assistance" means income or needs-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work-related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

* * * * *

(r) A qualified designated entity in good-standing with the Service means those designated entities whose cooperative agreements were not suspended or terminated by the Service or those whose agreements were not allowed to lapse by the Service prior to January 30, 1989 (the expiration date of the INS cooperative agreements for all designated entities), or those whose agreements were not terminated for cause by the Service subsequent to January 30, 1989.

Subsequent to January 30, 1989, and throughout the period ending on November 6, 1990, a QDE in good-standing may: (1) Serve as an authorized course provider under § 245a.3(b)(5)(i)(C) of this chapter; (2) Administer the IRCA Test for Permanent Residency (proficiency test), provided an agreement has been entered into with and authorization has been given by INS under § 245a.1(s)(5) of this chapter; and, (3) Certify as true and complete copies of original documents submitted in support of Form I–698 in the format prescribed in § 245a.3(d)(2) of this chapter.

(s) "Satisfactorily pursuing," as used in section 245A(b)(1)(D)(i)(II) of the Act, means: * * *

* * * * *

(2) An applicant presents a high school diploma or general educational development diploma (GED) from a school in the United States. A GED gained in a language other than English is acceptable only if a GED English proficiency test has been passed. (The curriculum for both the high school diploma and the GED must have included at least 40 hours of instruction in English and U.S. history and government); or

(3) An applicant has attended for a period of one academic year (or the equivalent thereof according to the standards of the learning institution), a state recognized, accredited learning institution in the United States and that institution certifies such attendance (as long as the curriculum included at least 40 hours of instruction in English and U.S. history and government); or

(4) An applicant has attended courses conducted by employers, social, community, or private groups certified (retroactively, if necessary, as long as enrollment occurred on or after May 1, 1987, and the curriculum included at least 40 hours of instruction in English and U.S. history and government) by the district director or the Director of the Outreach Program under § 245a.3(b)(5)(i)(D) of this chapter; or

(5) An applicant attests to having completed at least 40 hours of individual study in English and U.S. history and government and passes the proficiency test for legalization, called the IRCA Test for Permanent Residency, indicating that the applicant is able to read and understand minimal functional English within the context of the history and government of the United States. Such test may be given by INS, as well as, State Departments of Education (SDEs) (and their accredited educational agencies) and Qualified Designated Entities in good-standing (QDEs) upon agreement with and authorization by INS. Those SDEs and QDEs wishing to participate in this effort should write to the Director of the INS Outreach Program at 425 "I" Street, NW., Washington, DC 20536, for further information.

* * * * *

(v) The term "developmentally disabled" means the same as the term "developmental disability" defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act of 1987, Pub. L. 100–146. As a convenience to the public, that definition is printed here in its entirety:

The term "developmental disability" means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age twenty-two;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) Self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

3. Section 245a.2 is amended by removing and reserving paragraphs (a)(2)(i) and (c)(5), and; by revising paragraphs (d)(4) introductory text, and (k)(4) to read as follows:

§ 245a.2 Application for temporary residence.

(a) * * *

(2) * * *

(i) [Reserved]

* * * * *

(c) * * *

(5) [Reserved]

* * * * *

(d) * * *

(4) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (d)(3)(i) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the special rule will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

* * * * *

(k) * * *

(4) *Special rule for determination of public charge.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level, may be admissible under paragraph (k)(2) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. This regulation is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor.

* * * * *

4. Section 245a.3 is revised to read as follows:

§ 245a.3 Application for adjustment from temporary to permanent resident status.

(a) *Application period for permanent residence.* (1) An alien may submit an application for lawful permanent resident status, with fee, immediately subsequent to the granting of lawful temporary resident status. Any application received prior to the alien's becoming eligible for adjustment to permanent resident status will be administratively processed and held by the INS, but will not be considered filed until the beginning of the nineteenth month after the date the alien was granted temporary resident status as defined in § 245a.2(s) of this chapter. (2) No application shall be denied for failure to timely apply before the end of 30 months from the date of actual approval of the temporary resident application.

(b) *Eligibility.* Any alien who has been lawfully admitted for temporary resident status under section 245A(a) of the Act, such status not having been terminated, may apply for adjustment of status of that of an alien lawfully admitted for permanent residence if the alien:

(1) Applies for such adjustment anytime subsequent to the granting of temporary resident status but on or before the end of 30 months from the date of actual approval of the termporary resident application. The alien need not be physically present in the United States at the time of application; however, the alien must establish continuous residence in the United States in accordance with the provisions of paragraph (b)(2) of this section and must be physically present in the United States at the time of interview and/or processing for permanent resident status (ADIT processing);

(2) Establishes continuous residence in the United States since the date the alien was granted such temporary residence status. An alien shall be regarded as having resided continuously in the United States for the purpose of this part if, at the time of applying for adjustment from temporary to permanent resident status, or as of the date of eligibility for permanent residence, whichever is later, no single absence from the United States has exceeded thirty (30) days, and the aggregate of all absences has not exceeded ninety (90) days between the date of approval of the temporary resident application, Form I-687 (not the "roll-back" date) and the date the alien applied or became eligible for permanent resident status, whichever is later, unless the alien can establish that due to emergent reasons or circumstances beyond his or her control, the return to the United States could not be accomplished within the time period(s) allowed. A single absence from the United States of more than 30 days, and aggregate absences of more than 90 days during the period for which continuous residence is required for adjustment to permanent residence, shall break the continuity of such residence, unless the temporary resident can establish to the satisfaction of the district director or the Director of the Regional Processing Facility that he or she did not, in fact, abandon his or her residence in the United States during such period;

(3) Is admissible to the United States as an immigrant, except as otherwise provided in paragraph (g) of this section; and has not been convicted of any felony, or three or more misdemeanors; and

(4)(i)A) Can demonstrate that the alien meets the requirements of section 312 of the Immigration and Nationality Act, as amended (relating to minimal understanding of ordinary English and a knowledge and understanding of the

history and government of the United States); or

(B) Is satisfactorily pursuing a course of study recognized by the Attorney General to achieve such an understanding of English and such a knowledge and understanding of the history and government of the United States.

(ii) The requirements of paragraph (b)(4)(i) of this section must be met by each applicant. However, these requirements shall be waived without formal application for persons who, as of the date of application or the date of eligibility for permanent residence under this part, whichever date is later, are:

(A) Under 16 years of age; or

(B) 65 years of age or older; or

(C) Over 50 years of age who have resided in the United States for at least 20 years and submit evidence establishing the 20-year qualification requirement. Such evidence must be submitted pursuant to the requirements contained in Section 245a.2(d)(3) of this chapter; or

(D) Developmentally disabled as defined at § 245a.1(v) of this chapter. Such persons must submit medical evidence concerning their developmental disability; or

(E) Physically unable to comply. The physical disability must be of a nature which renders the applicant unable to acquire the four language skills of speaking, understanding, reading, and writing English in accordance with the criteria and precedence established in OI 312.1(a)(2)(iii) (Interpretations). Such persons must submit medical evidence concerning their physical disability.

(iii) (A) Literacy and basic citizenship skills may be demonstrated for purposes of complying with paragraph (b)(4)(i)(A) of this section by:

(*1*) Speaking and understanding English during the course of the interview for permanent resident status. An applicant's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship at the elementary literacy level. The test of an applicant's knowledge and understanding of the history and form of government of the United States shall be given in the English language. The scope of the testing shall be limited to subject matter covered in the revised (1987) Federal Textbooks on Citizenship or other approved training material. The test questions shall be selected from a list of 100 standardized questions developed by the Service. In choosing the subject matter and in phrasing questions, due consideration shall be given to the extent of the applicant's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his or her knowledge and understanding; or

(*2*) By passing a standardized section 312 test (effective retroactively as of November 7, 1988) such test being given in the English language by the Legalization Assistance Board with the Educational Testing Service (ETS) or the California State Department of Education with the Comprehensive Adult Student Assessment System (CASAS). The scope of the test is based on the 1987 edition of the Federal Textbooks on Citizenship series written at the elementary literacy level. An applicant may evidence passing of the standardized section 312 test by submitting the approved testing organization's standard notice of passing test results at the time of filing Form I–698, subsequent to filing the application but prior to the interview, or at the time of the interview. The test results may be independently verified by INS, if necessary.

(B) An applicant who fails to pass the English literacy and/or the U.S. history and government tests at the time of the interview, shall be afforded a second opportunity after six (6) months (or earlier, at the request of the applicant) to pass the tests, submit evidence of passing an INS approved section 312 standardized examination or submit evidence of fulfillment of any one of the "satisfactorily pursuing" alternatives listed at § 245a.1(s) of this chapter. The second interview shall be conducted prior to the denial of the application for permanent residence and may be based solely on the failure to pass the basic citizenship skills requirements. An applicant whose period of eligibility expires prior to the end of the six-month re-test period, shall still be accorded the entire six months within which to be re-tested.

(iv) To satisfy the English language and basic citizenship skills requirements under the "satisfactorily pursuing" standard as defined at § 245a.1(s) of this chapter the applicant must submit evidence of such satisfactory pursuit in the form of a "Certificate of Satisfactory Pursuit" (Form I–699) issued by the designated school or program official attesting to the applicant's satisfactory pursuit of the course of study as defined at § 245a.1(s) (1) and (4) of this chapter; or a high school diploma or general educational development diploma (GED) under § 245a.1(s)(2) of this chapter; or certification on letterhead stationery from a state recognized, accredited learning institution under § 245a.1(s)(3) of this chapter; or evidence of having passed the IRCA Test for Permanent Residency under § 245a.1(s)(5) of this chapter. Such applicants shall not then be required to demonstrate that they meet the requirements of § 245a.3(b)(4)(i)(A) of this chapter in order to be granted lawful permanent residence provided they are otherwise eligible. Evidence of "Satisfactory Pursuit" may be submitted at the time of filing Form I–698, subsequent to filing the application but prior to the interview, or at the time of the interview (the applicant's name and A90M number must appear on any such evidence submitted). An applicant need not necessarily be enrolled in a recognized course of study at the time of application for permanent residency.

(v) Enrollment in a recognized course of study as defined in § 245a.3(b)(5) and issuance of a "Certificate of Satisfactory Pursuit" must occur subsequent to May 1, 1987.

(5) A course of study in the English language and in the history and government of the United States shall satisfy the requirement of paragraph (b)(4)(i) of this section if the course materials for such instruction include textbooks published under the authority of section 346 of the Act, and it is

(i) Sponsored or conducted by: (A) An established public or private institution of learning recognized as such by a qualified state certifying agency; (B) An institution of learning approved to issue Forms I–20 in accordance with § 214.3 of this chapter; (C) A qualified designated entity within the meaning of section 245A(c)(2) of the Act, in good-standing with the Service; or (D) Is certified by the district director in whose jurisdiction the program is conducted, or is certified by the Director of the Outreach Program nationally.

(ii) A program seeking certification as a course of study recognized by the Attorney General under paragraph (b)(5)(i)(D) of this section shall file Form I–803, Petition for Attorney General Recognition to Provide Course of Study for Legalization: Phase II, with the Director of Outreach for national level programs or with the district director having jurisdiction over the area in which the school or program is located. In the case of local programs, a separate petition must be filed with each district director when a parent organization has schools or programs in more than one INS district. A petition must identify by name and address those schools or programs included in the petition. No fee shall be required to file Form I–803;

(A) The Director of Outreach and the district directors may approve a petition

where they have determined that (*1*) a need exists for a course of study in addition to those already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and/or (*2*) of this chapter the petitioner has historically provided educational services in English and U.S. history and government but is not already certified under § 245a.3(b)(5)(i) (A), (B), or (C); and (*3*) of this chapter the petitioner is otherwise qualified to provide such course of study;

(B) Upon approval of the petition the Director of Outreach and district directors shall issue a Certificate of Attorney General Recognition on Form I–804 to the petitioner. If the petition is denied, the petitioner shall be notified in writing of the decision therefor. No appeal shall lie from a denial of Form I–803, except that in such case where the petitions of a local, cross-district program are approved in one district and denied in another within the same State, the petitioner may request review of the denied petition by the appropriate Regional Commissioner. The Regional Commissioner shall then make a determination in this case;

(C) Each district director shall compile and maintain lists of programs approved under paragraph (b)(5)(i)(D) of this section within his or her jurisdiction. The Director of Outreach shall compile and maintain lists of approved national level programs.

(6) *Notice of participation.* All courses of study recognized under § 245a.3(b)(5)(i)(A) through (C) of this chapter which are already conducting or will conduct English and U.S. history and government courses for temporary residents must submit a Notice of Participation to the district director in whose jurisdiction the program is conducted. Acceptance of "Certificates of Satisfactory Pursuit" (Form I–699) shall be delayed until such time as the course provider submits the Notice of Participation, which notice shall be in the form of a letter typed on the letterhead of the cou2se provider (if available) and include the following:

(i) The name(s) of the school(s)/program(s).

(ii) The complete addresses and telephone numbers of sites where courses will be offered, and class schedules.

(iii) The complete names of persons who are in charge of conducting English and U.S. history and government courses of study.

(iv) A statement that the course of study will issue "Certificates of Satisfactory Pursuit" to temporary resident enrollees according to INS regulations.

(v) A list of designated officials of the recognized course of study authorized to sign "Certificates of Satisfactory Pursuit", and samples of their original signatures.

(vi) A statement that if a course provider charges a fee to temporary resident enrollees, the fee will not be excessive.

(vii) Evidence of recognition under 8 CFR 245a.3(b)(5)(i)(A), (B), or (C) (e.g., certification from a qualified state certifying agency; evidence of INS approval for attendance by nonimmigrant students, such as the school code number, or the INS identification number from the QDE cooperative agreement).

The course provider shall notify the district director, in writing, of any changes to the information contained in the Notice of Participation subsequent to its submission within ten (10) days of such change.

A Certificate of Attorney General Recognition to Provide Course of Study for Legalization (Phase II), Form I–804, shall be issued to course providers who have submitted a Notice of Participation in accordance with the provisions of this section by the distict director. A Notice of Participation deficient in any way shall be returned to the course provider to correct the deficiency. Upon the satisfaction of the district director that the deficiency has been corrected, the course provider shall be issued Form I–804. Each district director shall compile and maintain lists of recognized courses within his or her district.

(7) *Fee structure.* No maximum fee standard will be imposed by the Attorney General. However, if it is believed that a fee charged is excessive, this factor alone will justify non-certification of the course provider by INS as provided in § 245a.3(b)(10) and/or (12) of this section. Once fees are established, any change in fee without prior approval of the district director or the Director of Outreach may justify de-certification. In determining whether or not a fee is excessive, district directors and the Director of Outreach shall consider such factors as the means of instruction, class size, prevailing wages of instructors in the area of the program, and additional costs such as rent, materials, utilities, insurance, and taxes. District directors and the Director of Outreach may also seek the assistance of various Federal, State and local entities as the need arises (e.g., State Departments of Education) to determine the appropriateness of course fees.

(8) The Citizenship textbooks to be used by applicants for lawful permanent residence under section 245A of the Act shall be distributed by the Service to appropriate representatives of public schools. These textbooks may otherwise be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, and are also available at certain public institutions.

(9) *Maintenance of Student Records.* Course providers conducting courses of study recognized under § 245a.3(b)(5) of this chapter shall maintain for each student, for a period of three years from the student's enrollment, the following information and documents:

(i) Name (as copied exactly from the I–688A or I–688);

(ii) A-number (90 million series);

(iii) Date of enrollment;

(iv) Attendance records;

(v) Assessment records;

(vi) Photocopy of signed "Certificate of Satisfactory Pursuit" issued to the student.

(10) *Issuance of "Certificate of Satisfactory Pursuit" (I–699).* (i) Each recognized course of study shall prepare a standardized certificate that is signed by the designated official. The Certificate shall be issued to an applicant who has attended a recognized course of study for at least 40 hours of a minimum of 60-hour course as appropriate for his or her ability level, and is demonstrating progress according to the performance standards of the English and U.S. history and government course prescribed. Such standards shall conform with the provisions of § 245a.1(s) of this chapter.

(ii) The district director shall reject a certificate if it is determined that the certificate is fraudulent or was fraudulently issued.

(iii) The district director shall reject a Certificate if it is determined that the course provider is not complying with INS regulations. In the case of non-compliance, the district director will advise the course provider in writing of the specific deficiencies and give the provider thirty (30) days within which to correct such deficiencies.

(iv) District directors will accept Certificates from course providers once it is determined that the deficiencies have been satisfactorily corrected.

(v) Course providers which engage in fraudulent activities or fail to conform with INS regulations will be removed from the list of INS approved programs. INS will not accept Certificates from these providers.

(vi) Certificates may be accepted if a program is cited for deficiencies or decertified at a later date and no fraud was involved.

(vii) Certificates shall not be accepted from a course provider that has been decertified unless the alien enrolled in

and had been issued a certificate prior to the decertification, provided that no fraud was involved.

(viii) The appropriate State agency responsbile for SLIAG funding shall be notified of all decertifications by the district director.

(11) *Designated official.* (i) The designated official is the authorized person from each recognized course of study whose signature appears on all "Certificates of Satisfactory Pursuit" issued by that course;

(ii) The designated official must be a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students;

(iii) (A) The head of the school system or school, the director of the Qualified Designated Entity, the head of a program approved by the Attorney General, or the president or owner of other institutions recognized by the Attorney General must specify a "designated official". Such designated official may not delegate this designation to any other person. Each school or institution may have up to three (3) designated officials at any one time. In a multi-campus institution, each campus may have up to three (3) designated officials at any one time;

(B) Each designated official shall have read and otherwise be familiar with the "Requirements and Guidelines for Courses of Study Recognized by the Attorney General". The signature of a designated official shall affirm the official's compliance with INS regulations;

(C) The name, title, and sample signature of each designated official for each recognized course of study shall be on file with the district director in whose jurisdiction the program is conducted.

(12) *Monitoring by INS.* (i) INS Outreach personnel in conjunction with the district director shall monitor the course providers in each district in order to:

(A) Assure that the program is a course of study recognized by the Attorney General under the provisions of § 245a.3(b)(5).

(B) Verify the existence of curriculm as defined in § 245a.1(u) on file for each level of instruction provided in English language and U.S. history and government classes.

(C) Assure that "Certificates of Satisfactory Pursuit" are being issued in accordance with § 245a.3(b)(10).

(D) Assure that records are maintained on each temporary resident enrollee in accordance with § 245a.3(b)(9).

(E) Assure that fees (if any) assessed by the course provider are in compliance in accordance with § 245a.3(b)(7).

(ii) If INS has reason to believe that the service is not being provided to the applicant, INS will issue a 24-hour minimum notice to the service provider before any site visit is conducted.

(iii) If it is determined that a course provider is not performing accordance to the standards established in either § 245a.3(b)(10) or (12) of this chapter, the district director shall institute decertification proceedings. Notice of Intent to Decertify shall be provided to the course provider. The course provider has 30 days within which to correct performance according to standards established. If after the 30 days, the district director is not satisfied that the basis for decertification has been overcome, the course provider will be decertified. The appropriate State agency shall be notified in accordance with § 245a.3(b)(10)(viii) of this chapter. A copy of the notice of decertification shall be sent to the State agency.

(13) Courses of study recognized by the Attorney General as defined at § 245a.3(b)(5) of this chapter shall provide certain standards for the selection of teachers. Since some programs may be in locations where selection of qualified staff is limited, or where budget constraints restrict options, the following list of qualities for teacher selection is provided as guidance. Teacher selections should include as many of the following qualities as possible:

(i) Specific training in Teaching English to Speakers of Other Languages (TESOL);

(ii) Experience as a classroom teacher with adults;

(iii) Cultural sensitivity and openness;

(iv) Familiarity with compentency-based education;

(v) Knowledge of curriculum and materials adaptation;

(vi) Knowledge of a second language.

(c) *Ineligible aliens.* (1) An alien who has been convicted of a felony, or three or more misdemeanors in the United States.

(2) An alien who is inadmissible to the United States as an immigrant, except as provided in § 245a.3(g)(1).

(3) An alien who was previously granted temporary resident status pursuant to section 245A(a) of the Act has not filed an application for permanent resident status under section 245A(b)(1) of the Act by the end of 30 months from the date of actual approval of the temporary resident application.

(4) An alien who was not previously granted temporary resident status under section 245A(a) of the Act.

(5) An alien whose temporary resident status has been terminated under § 245a.2(u) of this chapter.

(d) *Filing the application.* The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(1) The application must be filed on Form I–698. The application will be mailed to the designated Regional Processing Facility having jurisdiction over the applicant's residence. Form I–698 must be accompanied by the correct fee and documents specified in the instructions.

(2) *Certification of documents.* The submission of original documents is not required at the time of filing Form I–698. A copy of a document submitted in support of Form I–698 filed pursuant to section 245A(b) of the Act and this part may be accepted, though unaccompanied by the original, if the copy is certified as true and complete by

(i) An attorney in the format prescribed in § 204.2(j)(1) of this chapter; or

(ii) An alien's representative in the format prescribed in § 204.2(j)(2) of this chapter; or

(iii) A qualified designated entity (QDE) in good standing as defined in § 245a.1(r) of this chapter, if the copy bears a certification by the QDE in good-standing, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: _____
Date: _____
Name: _____
QDE in good-standing representative
Name of QDE in good-standing: _____
Address of QDE in good-standing: _____
INS–QDE Cooperative Agreement Number: _____

(iv) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

(v) *Original documents.* Original documents must be presented when requested by the Service. Official government records, employment or employment-related records maintained by employers, unions, or collective bargaining organizations, medical records, school records maintained by a school or school board or other records maintained by a party other than the applicant which are submitted in evidence must be certified as true and complete by such parties and must bear

their seal or signature or the signature and title of persons authorized to act in their behalf. At the discretion of the district director and/or the Regional Processing Facility director, original documents may be kept for forensic examination.

(3) A separate application (I–698) must be filed by each eligible applicant. All fees required by § 103.7(b)(1) of this chapter must be submitted in the exact amount in the form of a money order, cashier's check or certified bank check. No personal checks or currency will be accepted. Fees will not be waived or refunded under any circumstances.

(4) Applicants who filed for temporary resident status prior to December 1, 1987, are required to submit the results of a serologic test for HIV virus on Form I–693, "Medical Examination of Aliens Seeking Adjustment of Status", completed by a designated civil surgeon, unless the serologic test for HIV was performed and the results were submitted on Form I–693 when the applicant filed for temporary resident status. Applicants who did submit an I–693 reflecting a serologic test for HIV was performed prior to December 1, 1987, must submit evidence of this fact when filing the I–698 application in order to be relieved from the requirement of submitting another I–693. If such evidence is not available, applicants may note on their I–698 application their prior submission of the results of the serologic test for HIV. This information shall then be verified at the Regional Processing Facility. Applicants having to submit an I–693 pursuant to this section are not required to have a complete medical examination. All HIV-positive applicants shall be advised that a waiver of the ground of excludability under section 212(a)(6) of the Act is available and shall be provided the opportunity to apply for the waiver. To be eligible for the waiver, the applicant must establish that:

(i) The danger to the public health of the United States created by the alien's admission to the United States is minimal,

(ii) The possibility of the spread of the infection created by the alien's admission to the United States is minimal, and

(iii) There will be no cost incurred by any government agency without prior consent of that agency. Provided these criteria are met, the waiver may be granted only for humanitarian purposes, to assure family unity, or when the granting of such a waiver is in the public interest in accordance with § 245a.3(g)(2) of this chapter.

(5) If necessary, the validity of an alien's temporary resident card (I–688) will be extended in increments of one (1) year until such time as the decision on an alien's properly filed application for permanent residence becomes final.

(6) An application lacking the proper fee or incomplete in any way shall be returned to the applicant with request for the proper fee, correction, additional information, and/or documentation. Once an application has been accepted by the Service and additional information and/or documentation is required, the applicant shall be sent a notice to submit such information and/or documentation. In such case the application Form I–698 shall be retained at the RPF. If a response to this request is not received within 60 days, a second request for correction, additional information, and/or documentation shall be made. If the second request is not complied with by the end of 30 months from the date the application for temporary residence, Form I–687, was approved the application for permanent residence will be adjudicated on the basis of the existing record.

(e) *Interview.* Each applicant regardless of age, must appear at the appropriate Service office and must be fingerprinted for the purpose of issuance of Form I–551. Each applicant shall be interviewed by an immigration officer, except that the adjudicative interview may be waived for a child under 14, or when it is impractical because of the health or advanced age of the applicant. An applicant failing to appear for the scheduled interview may, for good cause, be afforded another interview. Where an applicant fails to appear for two scheduled interviews, his or her application shall be held in abeyance until the end of 30 months from the date the application for temporary residence was approved and adjudicated on the basis of the existing record.

(f) *Numerical limitations.* The numerical limitations of sections 201 and 202 of the Act do not apply to the adjustment of aliens to lawful permanent resident status under section 245A(b) of the Act.

(g) *Applicability of exclusion grounds.*—(1) *Grounds of exclusion not to be applied.* The following paragraphs of section 212(a) of the Act shall not apply to applicants for adjustment of status from temporary resident to permanent resident status: (14) workers entering without labor certification; (20) immigrants not in possession of valid entry documents; (21) visas issued without compliance of section 203; (25) illiterates; and (32) graduates of non-accredited medical schools.

(2) *Waiver of grounds of excludability.* Except as provided in paragraph (g)(3) of this section, the Service may waive any provision of section 212(a) of the Act only in the case of individual aliens for humanitarian purposes, to assure family unity, or when the granting of such a waiver is otherwise in the public interest. In any case where a provision of section 212(a) of the Act has been waived in connection with an alien's application for lawful temporary resident status under section 245A(a) of the Act, no additional waiver of the same ground of excludability will be required when the alien applies for permanent resident status under section 245A(b)(1) of the Act. In the event that the alien was excludable under any provision of section 212(a) of the Act at the time of temporary residency and failed to apply for a waiver in connection with the application for temporary resident status, or becomes excludable subsequent to the date temporary residence was granted, a waiver of the ground of excludability, if available, will be required before permanent resident status may be granted.

(3) *Grounds of exclusion that may not be waived.* Notwithstanding any other provisions of the Act the following provisions of section 212(a) of the Act may not be waived by the Attorney General under paragraph (g)(2) of this section:

(i) Paragraphs (9) and (10) (criminals);

(ii) Paragraph (15) (public charge) except for an alien who is or was an aged, blind, or disabled individual (as defined in section 1614(a)(1) of the Social Security Act);

(iii) Paragraph (23) (narcotics), except for a single offense of simple possession of thirty grams or less of marijuana;

(iv) Paragraphs (27) (prejudicial to the public interest), (28) (communists), and (29) (subversives);

(v) Paragraph (33) (participated in Nazi persecution).

(4) *Determination of "Likely to become a public charge" and Special Rule.* Prior to use of the special rule for determination of public charge, paragraph (g)(4)(iii) of this section, an alien must first be determined to be excludable under section 212(a)(15) of the Act. If the applicant is determined to be "likely to become a public charge," he or she may still be admissible under the terms of the Special Rule.

(i) In determining whether an alien is "likely to become a public charge" financial responsibility of the alien is to be established by examining the totality of the alien's circumstances at the time of his or her application for legalization. The existence or absence of a particular factor should never be the sole criteria for determining if an alien is likely to

become a public charge. The determination of financial responsibility should be a prospective evaluation based on the alien's age, health, income, and vocation.

(ii) The Special Rule for determination of public charge, paragraph (g)(4)(iii) of this section, is to be applied only after an initial determination that the alien is inadmissible under the provisions of section 212(a)(15) of the act.

(iii) *Special Rule.* An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level is not excludable under paragraph (g)(3)(ii) of this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

(5) *Public cash assistance and criminal history verification.* Declarations by an applicant that he or she has not been the recipient of public cash assistance and/or has not had a criminal record are subject to a verification of facts by the Service. The applicant must agree to fully cooperate in the verification process. Failure to assist the Service in verifying information necessary for proper adjudication may result in denial of the application.

(h) *Departure.* An applicant for adjustment to lawful permanent resident status under section 245A(b)(1) of the Act who was granted lawful temporary resident status under section 245A(a) of the Act, shall be permitted to return to the United States after such brief and casual trips abroad, as long as the alien reflects a continuing intention to adjust to lawful permanent resident status. However, such absences from the United States must not exceed the periods of time specified in § 245a.3(b)(2) of this chapter in order for the alien to maintain continuous residence as specified in the Act.

(i) *Decision.* The applicant shall be notified in writing of the decision, and, if the application is denied, of the reason therefor. Applications for permanent residence under this chapter will not be denied at local INS offices (districts, suboffices, and legalization offices) until the entire record of proceeding has been reviewed. An application will not be denied if the denial is based on adverse information not previously furnished to the Service by the alien without providing the alien an opportunity to rebut the adverse information and to present evidence in his or her behalf. If inconsistencies are found between information submitted with the adjustment application and information previously furnished to the Service, the applicant shall be afforded the opportunity to explain discrepancies or rebut any adverse information. A party affected under this part by an adverse decision is entitled to file an appeal on Form I–694. If an application is denied, work authorization will be granted until a final decision has been rendered on an appeal or until the end of the appeal period if no appeal is filed. An applicant whose appeal period has ended is no longer considered to be an Eligible Legalized Alien for the purposes of the administration of State Legalization Impact Assistance Grants (SLIAG) funding. An alien whose application is denied will not be required to surrender his or her temporary resident card (I–688) until such time as the appeal period has tolled, or until expiration date of the I–688, whichever date is later. After exhaustion of an appeal, an applicant who believes that the grounds for denial have been overcome may submit another application with fee, provided that the application is submitted within his or her eligibility period.

(j) *Appeal process.* An adverse decision under this part may be appealed to the Associate Commissioner, Examinations (Administrative Appeals Unit) the appellate authority designated in § 103.1(f)(2). Any appeal shall be submitted to the Regional Processing Facility with the required fee within thirty (30) days after service of the Notice of Denial in accordance with the procedures of § 103.3(a) of this chapter. An appeal received after the thirty (30) day period has tolled will not be accepted. The thirty (30) day period for submitting an appeal begins three days after the notice of denial is mailed. If a review of the Record of Proceeding (ROP) is requested by the alien or his or her legal representative and an appeal has been properly filed, an additional thirty (30) days will be allowed for this review from the time the Record of Proceeding is photocopied and mailed. A brief may be submitted with the appeal form or submitted up to thirty (30) calendar days from the date of receipt of the appeal form at the Regional Processing Facility. Briefs filed after submission of the appeal should be mailed directly to the Regional Processing Facility. For good cause shown, the time within which a brief supporting an appeal may be submitted may be extended by the Director of the Regional Processing Facility.

(k) *Motions.* The Regional Processing Facility director may reopen and reconsider any adverse decision *sua sponte.* When an appeal to the Associate Commissioner, Examinations (Administrative Appeals Unit) has been filed, the INS director of the Regional Processing Facility may issue a new decision that will grant the benefit which has been requested. The director's new decision must be served on the appealing party within forty-five (45) days of receipt of any briefs and/or new evidence, or upon expiration of the time allowed for the submission of any briefs.

(l) *Certifications.* The Regional Processing Facility director or district director may, in accordance with § 103.4 of this chapter, certify a decision to the Associate Commissioner, Examinations (Administrative Appeals Unit) when the case involves an unusually complex or novel question of law or fact. The decision on an appealed case subsequently remanded back to either the Regional Processing Facility director or the district director will be certified to the Administrative Appeals Unit.

(m) *Date of adjustment to permanent residence.* The status of an alien whose application for permanent resident status is approved shall be adjusted to that of a lawful permanent resident as of the date of filing of the application for permanent residence or the eligibility date, whichever is later. For purposes of making application to petition for naturalization, the continuous residence requirements for naturalization shall begin as of the date the alien's status is adjusted to that of a person lawfully admitted for permanent residence under this part.

(n) *Limitation on access to information and confidentiality.* (1) No person other than a sworn officer or employee of the Department of Justice or bureau of agency thereof, will be permitted to examine individual applications. For purposes of this part, any individual employed under contract by the Service to work in connection

with the Legalization Program shall be considered an "employee of the Department of Justice or bureau or agency thereof".

(2) No information furnished pursuant to an application for permanent resident status under this section shall be used for any purpose except: (i) To make a determination on the application; or (ii) for the enforcement of the provisions encompassed in section 245A(c)(6) of the Act, except as provided in paragraph (n)(3) of this section.

(3) If a determination is made by the Service that the alien has, in connection with his or her application, engaged in fraud or willful misrepresentation or concealment of a material fact, knowingly provided a false writing or document in making his or her application, knowingly made a false statement or representation, or engaged in any other activity prohibited by section 245A(c)(6) of the Act, the Service shall refer the matter to the United States Attorney for prosecution of the alien and/or of any person who created or supplied a false writing or document for use in an application for adjustment of status under this part.

(4) Information contained in granted legalization files may be used by the Service at a later date to make a decision (i) On an immigrant visa petition or other status filed by the applicant under section 204(a) of the Act; (ii) On a naturalization application submitted by the applicant; (iii) For the preparation of reports to Congress under section 404 of IRCA, or; (iv) For the furnishing of information, at the discretion of the Attorney General, in the same manner and circumstances as census information may be disclosed by the Secretary of Commerce under section 8 of Title 13, Unites States Code.

(o) *Rescission.* Rescission of adjustment of status under 245a shall occur under the guidelines established in section 246 of the Act.

5. Section 245a.4 is amended by revising paragraphs (a)(10), (b)(4)(v) introductory text, (b)(11)(iv)(C), and, (c) introductory text to read as follows:

§ 245a.4 Adjustment to lawful resident status of certain nationals of countries for which extended voluntary departure has been made available.

(a) * * *

(10) "Public cash assistance" means income or need-based monetary assistance to include, but not limited to, supplemental security income received by the alien through federal, state, or local programs designed to meet subsistence levels. It does not include assistance in kind, such as food stamps, public housing, or other non-cash benefits, nor does it include work related compensation or certain types of medical assistance (Medicare, Medicaid, emergency treatment, services to pregnant women or children under 18 years of age, or treatment in the interest of public health).

* * * * *

(b) * * *

(4) * * *

(v) *Proof of financial responsibility.* An applicant for adjustment of status under this part is subject to the provisions of section 212(a)(15) of the Act relating to excludability of aliens likely to become public charges. Generally, the evidence of employment submitted under paragraph (b)(4)(iv)(A) of this section will serve to demonstrate the alien's financial responsibility during the documented period(s) of employment. If the alien's period(s) of residence in the United States include significant gaps in employment or if there is reason to believe that the alien may have received public assistance while employed, the alien may be required to provide proof that he or she has not received public cash assistance. An applicant for residence who is determined likely to become a public charge and is unable to overcome this determination after application of the Special Rule under paragraph (b)(11)(iv)(C) of this section will be denied adjustment. The burden of proof to demonstrate the inapplicability of this provision of law lies with the applicant who may provide:

* * * * *

(11) * * *

(iv) * * *

(C) An alien who has a consistent employment history which shows the ability to support himself or herself even though his or her income may be below the poverty level may be admissible under this section. The alien's employment history need not be continuous in that it is uninterrupted. It should be continuous in the sense that the alien shall be regularly attached to the workforce, has an income over a substantial period of the applicable time, and has demonstrated the capacity to exist on his or her income without recourse to public cash assistance. The Special Rule is prospective in that the Service shall determine, based on the alien's history, whether he or she is likely to become a public charge. Past acceptance of public cash assistance within a history of consistent employment will enter into this decision. The weight given in considering applicability of the public charge provisions will depend on many factors, but the length of time an applicant has received public cash assistance will constitute a significant factor. It is not necessary to file a waiver in order to apply the Special Rule for Determination of Public Charge.

* * * * *

(c) *Adjustment from temporary to permanent resident status.* The provisions of § 245a.3 of this part shall be applied to aliens adjusting to permanent residence under this part.

* * * * *

Date: June 23, 1989.

Richard E. Norton,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 89-15790 Filed 7-11-89; 8:45 am]

BILLING CODE 4410-10-M